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CHARLES ELM

Supreme Court of the United States

October Term, 1931.

No. 477.

Boston and Maine Railroad,
Petitioner,

v.

Fred Armburg,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO MOTION TO AMEND PETITION FOR WRIT OF CERTIORARI.

CLARENCE W. ROWLEY,
Counsel for the Respondent.

LAWYERS' BRIEF & PUBLISHING CO.
BOSTON, MASS.

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OCTOBER TERM, 1931.

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RESPONDENT.

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None of the issues which the petitioner now seeks to introduce were raised in the Trial Court.

No question concerning the Federal Employers' Liability Act, the Safety Appliance Acts, or the Hours of Service Act was raised at the trial.

The only requests for rulings upon the constitutional question were No. 11 (Record, page 24) and No. 14, h. (Record, page 25), that St. 1911, Ch. 751, Part 1, *Sect. 1*, now G. L. Ch. 152, *Sect. 66*, violates the Commerce Clause. This section is the statute law of Massachusetts enacted in 1911 abolishing the fellow servant defence. None of the other

requests (Record, pages 23, 24, 25) raised any constitutional question. The petitioner contended in the Trial Court that the Massachusetts Workmen's Compensation Act does not apply to it, and that a railroad corporation engaged in both intrastate and interstate commerce falls altogether outside of the Workmen's Compensation Act, its claim being based not on constitutional grounds but upon the contention that the Massachusetts Legislature did not intend to include within the Act the local commerce of railroads over which the state certainly has jurisdiction. The only claim of unconstitutionality made at the trial relates to the single section of the Massachusetts statute which abolishes the fellow servant defence.

The attention of the court is respectfully directed to the material difference between the words in the petition for certiorari (page 5) "The petitioner also requested a ruling that if *said Act and Sect. 66 thereof* be construed as applying to the defendant, a railroad corporation engaged in both intrastate and interstate commerce, it was in violation of the Commerce Clause" and the request made before the Trial Court (Record, page 24) "Statute 1911, Ch. 751, Part 1, *Sect. 1* now G. L. Ch. 152, *Sect. 66* violates the Commerce Clause of the Federal Constitution if it be construed as applicable to the defendant * * *".

Respectfully submitted,

CLARENCE W. ROWLEY,
Counsel for Respondent.

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BRIEF FOR THE RESPONDENT.

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